

APPROVAL/ LOCAL LAW TO AMEND THE PUTNAM COUNTY CODE ENTITLED ETHICS, CODE OF, AND FINANCIAL DISCLOSURE TO PROHIBIT THE DISCLOSURE OF CONFIDENTIAL MATERIAL

WHEREAS, the government of Putnam County necessarily reviews, considers, creates, stores, and transmits documents containing information which is properly kept confidential and is typically exempt from disclosure under the New York State Freedom of Information Law; and

WHEREAS, such confidential material includes, but is not limited to, information: 1) that could interfere with criminal investigations or judicial proceedings; 2) identifying a confidential law-enforcement source; 3) revealing criminal investigative techniques or non-routine police procedures; 4) specifically exempted from disclosure by state or federal statute; 5) that, if disclosed, would constitute an unwarranted invasion of personal privacy; 6) that, if disclosed would impair present or imminent contract awards or collective bargaining negotiations; 7) that, if disclosed, could endanger the life or safety of a person; 8) which could compromise the security of information technology assets; and 9) constituting inter-agency or intra-agency materials which are not statistical or factual tabulations or data, instructions to staff that affect the public; final agency policy or determinations; or external audits; and

WHEREAS, confidential communications with counsel for Putnam County, and documents created by counsel, are typically protected from disclosure by statutory and common law privileges including the attorney-client privilege, the deliberative process privilege, the settlement privilege, and the attorney work product doctrine; and

WHEREAS, confidential attorney-client communications are privileged from disclosure pursuant to Civil Practice Law and Rules Section 4503, and New York Courts including its highest court, the Court of Appeals, have long recognized that such privilege serves to foster uninhibited dialogue between lawyers and clients in their professional engagements, thereby ultimately promoting the administration of justice; and

WHEREAS, improper disclosure of confidential material can be damaging to individuals and preclude government from carrying out its duties, and

WHEREAS, improper disclosure of confidential communications with, and materials prepared by, counsel can have a chilling effect upon the ability of county officials and employees to seek the benefit of legal counsel, and also upon the ability of counsel to provide full and candid advice, which in turn may

adversely affect the execution of officials' and employees' duties to the county;
now therefore

Be it enacted by the Legislature of the County of Putnam as follows:

Chapter 55 (Ethics, Code of, and Financial Disclosure) of the Putnam County Code is hereby amended, as follows:

Section 1.

Section 55-2 of the Putnam County Code is hereby amended by adding the following definitions:

CONFIDENTIAL MATERIAL

A. Confidential Material shall include:

- (1) Any record designated "Confidential" by any Putnam County officer or employee, or by outside legal counsel or consultant to any agency or the Legislature of Putnam County, who is the creator or sender of such record;
- (2) Any record exempt from disclosure under the New York State Public Officers Law § 87(2); and
- (3) Any information contained in the records described in paragraphs (1) and (2) of this subsection.

B. Any record created by, or any communication to or from, the Putnam County Law Department, Legislative Counsel, or outside counsel or consultant retained by Putnam County, shall be presumed to be Confidential Material even if not explicitly designated "Confidential."

RECORD

Any information kept, held, filed, produced or reproduced by, with or for an agency or the Legislature of Putnam County, in any physical form whatsoever (including electronic media) including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photographs, letters, microfilms, computer tapes or discs, rules, regulations or codes. The term shall include a draft whether or not it results in a final document.

Section 2.

A new subsection 55-3(J) is hereby added to the Putnam County Code to read as follows:

- J. No County officer or employee shall disclose, distribute, transmit, forward, publicize, deliver, describe, or in any other way disseminate Confidential Material to any person who is not also a Putnam County officer or employee, or who is not outside legal counsel for Putnam County including Legislative Counsel, and which person is authorized to receive such Confidential Material as being within the scope of the receiver's employment, official duties, or engagement by or on behalf of Putnam County.

Section 3.

A new subsection 55-4(G) is hereby added to the Putnam County Code to read as follows:

- G. Disclosure of Confidential Material under the following circumstances:
 - (1) Pursuant to FOIL requests approved by the County Attorney, the Putnam County FOIL appeals officer, or by court order after exhaustion or waiver of any court appeals;
 - (2) For Legislative records protected by the attorney-client privilege, the deliberative process privilege, and/or constituting attorney work product, when such privilege is explicitly waived by a unanimous vote of the entire Legislature;
 - (3) Sharing of records within and between Putnam County officials and government agencies, including the Legislature, provided that such records must be conspicuously marked "CONFIDENTIAL" prior to sharing; and
 - (4) Sharing of records with local, state or federal government agencies, or with private consultants, vendors or contractors, for official purposes related to the business of Putnam County, provided that such sharing is approved by the County Attorney and further provided that such records are conspicuously marked "CONFIDENTIAL" prior to sharing.